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FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 9733
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 7811
RUEHBY/AMEMBASSY CANBERRA 2876
RUEHKA/AMEMBASSY DHAKA 1149
RUEHNE/AMEMBASSY NEW DELHI 2082
RUEHKO/AMEMBASSY TOKYO 2332
RUEHWL/AMEMBASSY WELLINGTON 2926
RUEHHK/AMCONSUL HONG KONG 2863
RUEHPT/AMCONSUL PERTH 1018
RHMFISS/BUMED WASHDC
RHHJJPI/USPACOM HONOLULU HI
RHHJJPI/PACOM IDHS HONOLULU HI
RUENAAA/SECNAV WASHDC
RUEKJCS/SECDEF WASHDC
RUEAWJB/DEPT OF JUSTICE WASHDC
RULSAV/NAVMEDEDRSCHCEN SILVER SPRING MD
RHEHNSC/NSC WASHDC
RUEAIIA/CIA WASHDC
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SENSITIVE
SIPDIS

DEPT FOR P, EAP, EAP/MTS, EAP/MLS, EAP/RSP, G/AIAG,
OES/IHA, L, L/DL FOR DICKERSON
USAID FOR ANE/CLEMENTS AND GH/CARROLL
DEPT PASS TO HHS/WSTEIGER/ABHAT/MSTLOUIS AND HHS/NIH
DEPT PASS TO USDA/FAS/OSTA BRANT, ROSENBLUM
DOJ FOR OFL/HOLLIS
DOJ FOR OFL/HERRUP
GENEVA FOR WHO/HOHMAN
NSC FOR E.PHU
SECDEF FOR USDP/ISA/APSA D.WALTON

E.O. 12958: N/A
TAGS: [PGOV](#) [TBIO](#) [KFLU](#) [KLIQ](#) [ID](#)
SUBJECT: LAWSUIT AGAINST THE USG: IMMUNITY LANGUAGE
SUGGESTED REVISION

REF: A. JAKARTA 1381
[1](#)B. WASHINGTON- EMBASSY JAKARTA EMAILS

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[1](#)1. (U) This message requests the Department's guidance.
Please see para 5.

[1](#)2. (SBU) SUMMARY: Embassy Jakarta has reviewed Washington's
draft diplomatic note (refmail) in response to the avian
influenza lawsuit. Embassy Jakarta recommends that the
assertion of sovereign immunity be the core point in the
note. END SUMMARY.

[1](#)3. (SBU) Embassy Jakarta welcomes Washington's decision to
assert sovereign immunity in the avian influenza lawsuit that
has been filed in Jakarta against the World Health
Organization (WHO) and the USG. Embassy Jakarta believes
that sovereign immunity is the appropriate posture in this
case and for that reason recommends placing the assertion of
sovereign immunity before any statements on the allegations
in the case (ref A).

[1](#)4. (SBU) Embassy Jakarta strongly recommends that any
language on the merits of the case should be unembellished
and clear. Please see Mission's proposed revised draft of the
note in para 6 below.

[1](#)5. (SBU) ACTION REQUEST: Mission requests Washington

provide interagency-cleared language along the lines of the proposed note below.

16. (SBU) Amended draft diplomatic note:

BEGIN TEXT

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs of the Republic of Indonesia, and has the honor to refer to the Department's diplomatic note D.601/PO/VII/2008/59 forwarding the attached "Court Summons Letter" and related lawsuit brief. The Court Summons Letter relates to proceedings brought by Sarmili against the World Health Organization (WHO) and the United States of America for the death of plaintiff's son from avian flu. The Government of the United States understands that a hearing in the matter is scheduled on September 17, 2008, before the Central Jakarta State Court.

The Embassy of the United States of America has the honor to draw the attention of the Department of Foreign Affairs of the Republic of Indonesia to the immunity to which the United States of America is entitled as a matter of international law. Moreover, the United States of America wishes to state that the allegations in the complaint regarding the conduct of the United States of America are on their face false and without credibility. The United States of America views any attempt to use a national court as a forum to disseminate groundless allegations regarding the conduct of the World Health Organization, the United States of America, or other states and organizations in responding to outbreaks of disease and attempting to prevent its spread, as an abuse of

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process.

In light of the foregoing, the Embassy of the United States of America respectfully requests that the Department of Foreign Affairs of the Republic of Indonesia take all steps available to it to cause the case to be dismissed prior to any hearing.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs of the Republic of Indonesia the assurances of its highest consideration.

Embassy of the United States of America,
Jakarta, August 7, 2008

END TEXT
HUME